

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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Easter Unlimited, Inc. d/b/a Fun World,	:	No. 18 Civ. 6637-JFB-ARL
Plaintiff,	:	
	:	
-against-	:	<u>DECLARATION OF</u>
	:	<u>PATRICK S. KABAT</u>
	:	
Terry Rozier,	:	
Defendant.	:	
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Patrick S. Kabat, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am counsel for defendant Terry Rozier in the above-captioned action.

2. I submit this Declaration in support of Rozier’s Motion for Summary Judgment.

3. Attached hereto as **Exhibit A** is a true and correct copy of correspondence from counsel for plaintiff Easter Unlimited, Inc. d/b/a Fun World (“Easter Unlimited) containing Easter Unlimited’s final responses to certain Interrogatories and Requests for Production served by Rozier.

4. That correspondence is incorrectly dated May 5, 2020. It was sent at 11:00 PM the night before the parties were ordered to have completed verbal conferences to resolve outstanding discovery deficiencies in Easter Unlimited’s responses and productions, and report which issues, if any, in Easter’s discovery obligations, remained. That correspondence also incorrectly purports to present and respond to Rozier’s positions. The sections that purport to describe Rozier’s positions inaccurately summarize an informal list of outstanding issues the Rozier’s counsel provided to Easter Unlimited’s to structure their scheduled telephonic meet-and-confer.

5. That conference never happened. Counsel cancelled that teleconference before the status conference about Mr. Rozier's discovery deficiencies, but agreed to reconvene telephonically, as ordered at that hearing.

6. Easter Unlimited did not respond to a single discovery request, including Rozier's requests for admissions, until after discovery closed. Rozier was constrained to move to compel responses on the last day of the expanded discovery period, which he consented to expand to allow Easter Unlimited time to respond and produce documents. That motion and its exhibits document his efforts to confer, and his discovery requests. ECF Doc. No. 34 (Feb. 7, 2020).

7. Easter Unlimited has not produced any documents substantiating its purported authorship of the "Ghost Face" mask it sells, either before or after discovery closed.

8. During discovery, Easter Unlimited did not produce any documents bearing on its purported use of the "design mark" it registered (an image of a figure wearing the "Ghost Face" mask while holding a knife over the words "Ghost Face") to denote Easter Unlimited's brand.

9. Throughout the three-week period in which the parties were admonished to "work hard to resolve" the outstanding deficiencies at the status hearing, counsel for Easter Unlimited declined to discuss the substance of a single issue.

10. Rozier's counsel followed up telephonically and by email, but in their exchanges, counsel for Easter Unlimited declined to provide a position on any open discovery item until the night before the parties' discussions were ordered to conclude.

11. That eleventh-hour correspondence purported to replace the verbal discussions the parties were ordered to conduct. Nonetheless, Mr. Rozier's counsel attempted to review, evaluate, consult his client, and draft a statement identifying which issues remained from the

letter, so that the parties could submit separate statements jointly. But he was unable to join the draft joint statement provided to him by Easter Unlimited after close of business on its due date.

12. That draft “joint” statement purported, on behalf of both parties, to treat the issues as having been discussed, and on inaccurate summaries of Rozier’s positions, resolved. It also suggested, like the correspondence, that Mr. Rozier’s email replaced the discussion it was provided, at Easter Unlimited’s request, to facilitate.

13. No further discovery responses or documents have been provided.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2020

s/ Patrick S. Kabat

Patrick S. Kabat